THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

W.P. No. 15202 of 2006

Dated: ___.11.2006

Smt. P. Aaliya

..Petitioner

Vs

The Assistant Commercial Tax Officer (Check Post),
Tana, Chittoor District and others.

..Respondents.

THE HONOURABLE SRI JUSTICE J. CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D. APPA RAO

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O R D E R (per the Hon'ble Sri Justice D. Appa Rao)

The petitioner seeks declaration by a Writ of Mandamus that the action of the 1st and 2nd respondents in seizing and detaining the lorry AP O2 T 6255 is illegal and arbitrary, and to release the same.

2) The case of the petitioner is that she is the owner of the goods vehicle AP O2 T 6255 carrying on business in transporting goods. On 15.3.2006 the said vehicle was engaged for transport of tamarind bags from Punganur to Chennai. On its way the 2nd respondent Deputy Commercial Tax Officer detained the vehicle at Gangadhara Nellore village near Chittoor at 1.30 a.m., and inspected the goods as well as the documents. The driver of the vehicle has furnished the details of the owners of the goods. However, the 2nd respondent had taken the vehicle along with the goods to the Commercial Tax Check-post, Thana, Chittoor and handed over the same to the 1st respondent the Assistant Commercial Tax Officer (check-post). The 1st respondent directed the driver to take back the vehicle along with goods to Punganur and handover the same to the respective owners. Accordingly the driver returned to Punganur, handed over goods to the respective owners. While so on 16.3.2006 the 1st responded seized the vehicle in the mechanic shed and kept with R3 the Station House Officer, Madanapalle Police Station, on the ground that the

driver of the vehicle had taken away the vehicle without his permission. The 1st respondent has illegally seized the vehicle. In spite of representations the vehicle was not released. The respondents have no power to seize the vehicle. Section 45 of the Value Added Tax Act, 2005 ('the Act' for short) confers no power on the respondents to detain the vehicle. The vehicle is getting damaged in the process. Therefore, she filed this writ petition seeking release of the vehicle.

3) The 1st respondent filed counter *inter alia* stating that R2 detained the said lorry containing 250 baskets and 60 bags of tamarind on 15.3.2006, on the ground that the goods were being transported without proper documents. The 1st respondent had taken custody of the vehicle at 6.45 a.m. His predecessor in interest handed over the goods lorry when he was taking charge informing that it was detained for further enquiry into the matter. On 16.3.2006 at about 1-30 a.m. when he was busy at the check-post, the lorry driver entered the check post office and took away the keys of the vehicle kept in table drawer and escaped with goods without intimating. In spite of his efforts, he could not stop the vehicle. As such he telephoned to R3 followed by a written complaint personally submitted by him. He also marked a copy to the Deputy Superintendent of Police and his superiors. On 16.4.2006 he was transferred to Proddatur and as such he was relieved on 20.4.2006. He denied having detained the vehicle. R2 detained the vehicle when it was carrying goods. It was not an empty vehicle. The records disclose that the goods are in the name of two persons viz., K. Rasheed and Allabaksh, the husband of the petitioner. Notice sent to Allabaksh was received by the petitioner. He did not respond to it. K. Rasheed disowned the goods. The 2nd respondent after detailed enquiry opined that the petitioner was the owner of the goods. Section 45(2) of the Act, read with Rule 55 and 59 of the A.P. Value Added Tax Rules, 2005 ('the Rules' for short) empower the officers of the department to detain goods vehicle. Therefore, he prayed for dismissal of the petition.

4) The 3rd respondent, the Station House Officer filed counter stating that the 2nd respondent in his letter dated 3.8.2006 informed that the said vehicle was destrained by him by affixing Form No.II notice under A.P. Revenue Recovery Act, 1864, and requested him to keep the vehicle till public auction is conducted. The 2nd respondent handed over the vehicle along with the letter to the Head constable on 3.8.2006 and since then the lorry has been in his possession till 12.9.2006, on which day vehicle was released and handed over to the petitioner, pursuant to the orders of the High Court dated 4.9.2006. When he verified, he found that no complaint was lodged either by 1st respondent or 2nd respondent. Therefore, no case was registered at Gangadhara Nellore police station. As such, he prayed for dismissal of the writ petition.

5) The 1st respondent filed rejoinder to the counter affidavit denying the facts mentioned by the 3rd respondent. He reiterated that the driver took away the lorry without any authority and on that he made a telephone call followed by written complaint to the Station House Officer, Gangadhara Nellore, evidenced by dispatch register. The very writ petitioner mentioned that the vehicle was with the 3rd respondent. It was also referred to by R.2 in the confiscation order dated 15.6.2006. The allegation of R3 that the lorry came into his custody on 3.8.2006 is false. He requested the Station House Officer, Gangadhara Nellore vide letter Rc.No.25/06/Jr.CTL, enquiring whether F.I.R. was registered on his complaint. He did not receive any reply so far.

6) It is not in dispute that the petitioner is the owner of the lorry bearing No. AP 02 T 6255. It is also not in dispute that when the vehicle was transporting 250 baskets and 60 bags of tamarind, the vehicle was detained on the ground that it was not carrying requisite documents. The 2nd respondent detained the lorry on 15.3.2006. The assertion of the 1st

respondent was that 250 baskets of tamarind belong to one Rasheed and the remaining 60 bags of tamarind belong to the husband of the petitioner.

7) The question whether the tamarind was liable for confiscation or not would be determined in the enquiry conducted by R1 and R2. The petitioner questions the propriety of R1 and R2 to detain her vehicle. This Court by virtue of an interim order dated 4.9.2006 directed the 3rd respondent to release the vehicle to the petitioner on condition that the petitioner furnishes immovable property security for an amount ofRs.50,000/- to the satisfaction the 3rd respondent. Accordingly, the vehicle was released by the 3rd respondent.

8) The learned counsel for the petitioner contended that the department is not empowered to detain the goods vehicle and therefore, the action of R1 and R2 in detaining the vehicle and entrusting to the police is illegal. Section 45 of the Act, authorizes establishment of check posts to prevent or check evasion of tax. The check post officer who mans the check-post is empowered to examine the contents in the vehicle and inspects all records relating to the goods which are in possession of such driver or other person in charge for the purpose of asserting whether the goods were being carried under valid documents and whether tax has been paid.

9) Rule 56(3) of the Rules empowers the officer in-charge of the check post to detain the vehicle along with the goods, if the owner or person in-charge of the goods vehicle did not comply with the provisions made under Rule 55(8), 55(9) and 55(10) of the rules. The procedures and powers laid down in sub-rule (1) and sub-rule (2) of this rule shall be followed by the Officer in charge of the Check posts to dispose of such detained goods and vehicles. From the perusal of the above provisions, there is undoubted authority on the officers of the check post to detain the goods vehicle, however, not beyond a time necessary.

10) Coming to facts, the petitioner herself admits in her petition that R.1 seized vehicle on 16.3.2006 and kept with R3. R1 asserts that on 15.3.2006 when the vehicle was transporting goods without proper documents, it was detained. The police alleges that R3 through his letter 3.8.2006 informed that the vehicle was detained by affixing Form-II notice under A.P. Revenue Recovery Act, 1864 and requested him to keep the vehicle. Since then the lorry has been in his possession. R1 in his counter reply asserted that even in the confiscation order dated 15.6.2006 the fact that the vehicle was detained at the check-post on 15.3.2006 was made a mention. These are all disputed questions of fact.

11) It is settled law that under Article 226 of the Constitution of India the High Court would generally decline adjudication of questions which depend upon appreciation of evidence. Whether the vehicle was detained beyond a time necessary is a question that cannot be determined in this Writ Petition. If petitioner thinks that the action of respondents is malafide and entitled to damages she can as well take recourse before an appropriate forum. Since the vehicle was already returned to the petitioner, no further question sustains in this writ petition. The security furnished in this regard in favour of R3 shall stand discharged.

12) The Writ Petition is disposed of accordingly. No costs.

JUSTICE J. CHELAMESWAR

JUSTICE D. APPA RAO,

____December 2006.

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